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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/605,492	10/02/2003	Ralf Krueger	LWEP:119US	2491
24041	7590	08/05/2005	EXAMINER	
SIMPSON & SIMPSON, PLLC 5555 MAIN STREET WILLIAMSVILLE, NY 14221-5406			PRITCHETT, JOSHUA L	
			ART UNIT	PAPER NUMBER
			2872	

DATE MAILED: 08/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/605,492

Applicant(s)

KRUEGER, RALF

Examiner 571-272-2318

Joshua L. Pritchett

Art Unit

2872

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 29 July 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-3 and 8-13.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s).  
13. ☐ Other: \_\_\_\_\_.

  
**DREW A. DUNN**  
**SUPERVISORY PATENT EXAMINER**

Continuation of 11. does NOT place the application in condition for allowance because: On pages 2 and 3, applicant argues that Wolleschensky is solving a different problem than Hoffman. Both reference are in the same field of endeavor, namely microscopy imaging. Hoffman is clearly a microscope and Wolleschensky is capable of being used in a microscope imaging apparatus as stated in paragraph 0030.

On pages 3 and 4, applicant argues that the Wolleschensky grating is structurally and functionally different than the Hoffman modulator. The Wolleschensky reference is not used to teach the structure of the optical modulator only that the modulator is capable of tilting and potential components to form the modulator. The positioning of the Wolleschensky reference does not impact the teaching of the optical modulator tilting, which is the teaching that is combined into the Hoffman invention.

On page 4, applicant argues the Wolleschensky reference teaches away from the present invention. The Wolleschensky reference is not used to replace the Hoffman modulator only to teach that the modulator can be capable of tilting. The motivation to combine the two reference may come from the prior art of the knowledge of one of ordinary skill in the art. The motivation for combining the Wolleschensky teachings with the Hoffman invention is to reduce the amount of image aberration.

On pages 4 and 5, applicant argues that Dultz is not analogous art with Hoffman. Both Hoffman and Dultz address the problem of manipulating polarized light. Therefore the Hoffman and Dultz inventions are analogous art.

On pages 5 and 6, applicant argues that Hoffman fails to teach a tilting modulator. The MacDonald reference is used to provide this teaching.

On page 6, applicant argues that MacDonald is not analogous art to Hoffman. Both Hoffman and MacDonald deal with the modulation of light. Therefore, the MacDonald and Hoffman inventions are analogous art.

On pages 6 and 7, applicant argues that Hoffman does not teach multiple modulators. The rejection relies on the MacDonald reference to teach the multiple modulators. Also the Hoffman invention may be interpreted as having multiple modulators based on the fact that Hoffman's modulator has three distinct sections as admitted by applicant on page 3 of Amendment. Each of the sections may be considered a modulator. However, in the current rejection the MacDonald reference teaches the use of multiple modulators.

On page 7, applicant argues that MacDonald does not teach modulators arranged on a carrier. The claim language, "mounted...on the carrier," does not require that the modulator be touching the carrier only that the modulator be mounted on the carrier. In a stack of three boxes the top box does not touch the bottom box, but it is still mounted on the bottom box.

On page 7, applicant argues that MacDonald teaches against a non-reflective modifying layer. The MacDonald reference is used to teach the use of a tiltable carrier, not the modifying layer. The Hoffman reference teaches the use of a non-reflective modifying layer.